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		Examiner Name	STEPHEN S. HONG		
Total Number of Pages in This Submission	72	Attorney Docket Number	PHN 16	6695	
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UNITED STATES PATENT AND TRADEMARK OFFICE

340-04

Patent Application Ser. No.: 09/182,825

Group Art Unit: 2178

Filing Date: 10/29/98

Examiner: STEPHEN S. HONG

Attorney Docket Number PHN 16695

Inventor Name(s): TEN KATE

Title: METHOD FOR CODING A PRESENTATION ...

Honorable Commissioner of Patents and Trademarks Washington, D.C. 20231

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Technology Center 2100

APPEAL BRIEF

Sir:

This is an appeal from the final rejection of Claims 28-44.

I. REAL PARTY IN INTEREST

The real party in interest is Koninklijke Philips Electronics, N.V., a corporation of the Netherlands.

II. RELATED APPEALS AND INTERFERENCES

Applicant is not aware of any related appeals or in interferences.

III. STATUS OF CLAIMS

Claims 28-34 stand rejected under 35 USC §101.

Claims 28-32, 34-40, and 42 stand rejected under 35 USC §102 over US Pat. No.

5,892,507 ("Moorby").

Claims 33, 41, 43, and 44 stand rejected under 35 USC §103 over Moorby in view of US Pat. No. 5,680,619 ("Gudmondson").

IV. STATUS OF AMENDMENTS

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The response under rule 116 did not contain an amendment. Therefore, though the argument was not accepted, there is no unentered 116 amendment.

V. SUMMARY OF THE INVENTION

The invention relates to storing program information. By "program" is meant the kind of program traditionally shown on TV, though now often shown on other media.

Program portions, in accordance with the invention, are stored including a subpresentation program segment. Perhaps it is simplest, conceptually, to look at Figure 3, where a
sub-presentation program segment is shown at 304 and at 306, though segments are also shown
in Figure 2. The segment includes a play-out specification and an interface program segment.

Play-out specifications are illustrated in both Figures 2 and 3, but it would be simplest to look at
boxes 308, 310, and 312. Program interface segments are also illustrated in both Figures, but
again, for simplicity, let us refer only to element 318. The interface program segment includes a
reference timing for the playout specification. The reference timing is defined independent of the
presentation element. This is illustrated in the figure where the interface program segment is
stored separately from the presentation element.

It should be noted that the wording of claims 43 and 44 is slightly different from the wording of the earlier claims. The term "play-out specification" is used to refer to the structure that is separate from the presentation element structure; while in claim 28 the term "sub-C:\My Documents\Anne\legal practice\Philips\prosecution\n 16695 -- appeal brief.doc

presentation program structure" is used for this, while "play-out specification" is a part of the presentation element. Thus the term "play-out specification" has a different meaning from in the earlier claims. This slightly different use of words does not change that each sub-presentation has at least two structures and that the timing information is stored in a different structure from the presentation element.

VI. THE ISSUES

» '

Is the section 101 rejection correct?

Is the section 102 rejection correct?

Is the section 103 rejection correct?

VII. GROUPING OF THE CLAIMS

The claims do not stand or fall together.

VIII. THE ARGUMENT

Rejection under 35 USC §101

The rejected claims recite the actual program portion stored in a computer readable medium. The Examiner considers that these claims recite printed matter. In making this rejection, the Examiner misconstrues the holding of <u>In re Lowry</u>, 32 USPQ2d 1031 (Fed. Cir. 1994).

This case particularly relates to the patentability of stored data structures. The Lowry case does NOT require a data structure claim to recite a functional application in order to be patentable. The claims need only dictate how programs manage information.

"Nor are the data structures analogous to printed matter. Lowry's ADOs do not represent merely underlying data in a database. ADOs contain both information used by application programs and information regarding their physical interrelationships within a memory. Lowry's claims dictate how application programs manage information. Thus, Lowry's claims define functional characteristics of the memory." 32 USPQ 2d at 1034.

What is required here is a recitation of:

- A. Physical interrelationships between information in memory; and/or
- B. Dictating how application programs manage information and/or
- C. Defining functional characteristics of memory, which can be inferred from A& B together.

Applicants' claim 28 recites:

- 28. A presentation program portion stored on a computer readable medium, said presentation the program portion comprising:
 - a sub-presentation programs segment comprising:
 - a presentation element with a play-out specification indicating how the presentation element is to be played; and an interface program segment defining a reference timing for the play-out specification, wherein the reference timing is defined independent of the presentation element.

This claim recites a physical interrelationship between information in memory, because the subpresentation program segment comprises both the presentation element and the interface program segment. The claim dictates how an application program is to manage the memory because the timing in the interface program segment tells the application programs running on the computer how to manage the use of the other segment. Thus, as in <u>Lowry</u>, the recitations define functional characteristics of a memory and are therefore patentable.

The other rejected claims similarly contain functional recitations. For instance claim 29 recites as follows:

29. The presentation program portion of claim 28, wherein the subpresentation program segment comprises a sequence of presentation elements which are programmed to be presented one after the other.

Again, this claim dictates how memory is to be managed, because there is a sequence of presentation elements. This claim also dictates how an application program is supposed to use the data, because the elements are to be presented one after the other. Accordingly, this claim does not constitute printed matter under the <u>Lowry</u> case.

In the following claim listing, Applicants have marked physical interrelationships in memory with *italics* and dictations of functioning of application programs in **bold**.

30. The presentation program portion of Claim 28, wherein the sub-presentation program segment comprises a group of presentation elements which are programmed to be presented simultaneously with respect to each other.

- 31. The presentation program portion of Claim 28, wherein the reference timing specifies the start of the presentation element with respect to the subpresentation program segment.
- 32. The presentation program portion of Claim 28, wherein the reference timing specifies the duration of the presentation element with respect to the subpresentation program segment.
- 33. The presentation program portion of Claim 28, wherein the play-out specification includes a location specification specifying a location of the presentation element when presented and wherein the interface program segment provides a location frame of reference relative to which the location specification for the presentation element is specified.
- 34. The presentation program portion of Claim 28, wherein the interface program segment provides a sub-presentation priority specifying a priority with respect to presenting content representative of the sub-presentation program segment.

Accordingly, as indicated in the special type fonts above, each and every one of the rejected claims independently falls within the criteria specified in <u>Lowry</u> for patentable data structures in memory. The printed matter rejection is therefore inappropriate and should be overturned.

General deficiency of art rejections with respect to 37 CFR 1.104

The art rejections fail to satisfy 37 CFR 1.104 (c) (2)), which states that

"When a reference is complex ... the particular part relied upon must be designated as nearly as is practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified."

The primary reference is complex. Moorby contains 18 sheets of drawing and 24 columns of text, but the Examiner does not indicate where the recited claim elements of any specific claim are to be found in the reference. Instead, the Examiner paraphrases groups of claims together, without citing any specific language from any claim and then purports to find this conglomerate paraphrase in the reference. The invention is not as the Examiner makes a conglomerate paraphrase. The invention is as claimed.

Applicants have repeatedly pointed out that these rejections are improper and repeatedly requested that the Examiner clarify the rejections. The Examiner has not done so.

Rejection under 35 USC §102: independent claims 28 & 37

Claim 28 recites

A presentation program portion stored on a computer readable medium, said presentation the program portion comprising:

a sub-presentation programs segment comprising:

a presentation element with a play-out specification indicating how the presentation element is to be played; and

an interface program segment defining a reference timing for the play-out specification, wherein the reference timing is defined independent of the presentation element.

This claim requires a stored portion on a medium to include a segment which in turn includes an element and a segment. This claim defines stored structures within a medium readable by a computer.

Against this claim, the Examiner cites Moorby. Moorby shows a graphical user interface (GUI). Moorby fails to teach or suggest any specific structures stored within a computer readable medium. The Examiner contends that the figures in Moorby illustrate such structures, but that is simply not the case. The figures show images on a screen which might correspond to any structures in memory.

Moreover, the screen itself cannot be considered the relevant medium, because presentation elements and timing references themselves are not in the screen icon. They must be calculated or retrieved elsewhere.

Moreover, since Moorby appears to be an authoring tool, it talks about empowering users to create programming, without indicating precisely what is stored.

Accordingly, the Examiner has failed to make a prima facie case against claim 28.

However, even if the figures in Moorby did correspond to structures in memory, they would fail to teach or suggest the limitations of claim 28. Claim 28 recites that "the reference timing is defined independent of the presentation element." The GUI of Moorby shows the graphical representation of the presentation element integrated with, not independent from, the

graphical representation of the timing information, since the timing information is represented by sizing the representation of the presentation element.

Claim 37 is analogous in scope to claim 28, except that it relates to an information carrier rather than the presentation program portion.

Rejection under 35 USC §102: independent claim 36

Claim 36 recites:

An apparatus comprising a converter module for amending a coded presentation, the coded presentation comprising:

a sub-presentation program segment comprising:

a presentation element with a play-out specification indicating how the presentation element is to be played; and an interface program segment defining a reference timing for the play-out specification, wherein the reference timing is defined independent of the presentation element, wherein the converter module is arranged to substitute the sub-presentation by a further sub-presentation comprising a corresponding interface.

Claim 36 is similar in scope to claims 28 and 37, except for the last two lines which specify details of a converter module. The Examiner has not indicated where this converter module is to be found in the reference. Particularly Applicants are unable to find where one sub-presentation is substituted for another, with the further sub- presentation comprising a corresponding interface — this interface being a detail of how things are stored in memory, which is not taught or

suggested by the user interface of Moorby. Therefore this claim distinguishes even more clearly over the reference than the previous ones.

Moorby: independent claim 35

Claim 35 recites:

A method for playing out a coded presentation on an electronic presentation device, the method comprising the acts of:

playing out at least one sub-presentation which comprises the acts of: determining a play-out specification for a presentation element based on a timing reference of the sub-presentation that is independent of the presentation element;

playing out the presentation element in accordance with the playout specification.

This claim is a bit broader than the other independent claims, because it does not set out as many structures stored in a medium. However, the claim still recites that the timing reference is independent of the presentation element. As explained, with respect to claims 28 and 37, the Examiner has failed to indicate where this is allegedly shown in the reference. The GUI interface referred to by the Examiner illustrates timing visually as part of the presentation element. Accordingly, the Examiner has failed to make a prima facie case against this claim.

Moorby/Gudmondson: claim 43

The Examiner appears to misconstrue this claim. Claim 43 recites, inter alia, that a multi-C:\MY DOCUMENTS\ANNE\LEGAL PRACTICE\PHILIPS\PROSECUTION\N16695 -- APPEAL BRIEF,DOC

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media presentation is stored as a plurality of self-contained sub-presentation data structures. Claim 43 further recites that each data structure includes a play-out specification sub-structure and a plurality of presentation element sub-structures. A play-out specification portion is retrieved from a first location in the data structure. The play-out specification specifies timing behavior of a respective presentation element within the data structure. Responsive to the play-out specification, at least one respective presentation element is retrieved from a second location in the data structure. Applicant respectfully submits that Examiner just stops at the self-contained data structures recited in the first bulleted clause of claim 43 and fails to read the rest of the claim or indicate where the rest of the claim may be found in the reference.

The Examiner cites col. 8, lines 25-67 of Gudmondson. This section does not go into any detail about what is inside the container objects. It just talks about how the objects interact with each other. This section of Gudmondson therefore fails to teach or suggest the particular data structures that are recited in claim 43 and reviewed in the previous paragraph of the present document.

The Examiner then cites Fig. 16 (c) of Gudmondson. This figure, like Moorby, only shows a user interface. It fails to teach or suggest what is going on at a detailed level within the memory or within any data structures.

The Examiner then cites column 16, lines 53+. This section relates to Fig. 1, but Applicants are unable to see any correspondence between this figure and the particular structures recited in claim 43, nor has the Examiner pointed to any.

The Examiner refers to Moorby, figures 11a-c & 12a, but these figures again show the GUI, not what data structures are in memory.

The Examiner cites col. 2, lines 34-36 of Moorby. This section refers to a data file, but does not indicate what structures are stored in it.

Accordingly, Applicant respectfully submits that the Examiner has failed to make a *prima* facie case of obviousness against claim 43.

Claim 44

This claim recites:

The method of claim 43, comprising accessing a self-contained, sub-sub-presentation data structure *from within* the sub-presentation data structure, which sub-sub-presentation data structure comprises at least one play-out specification sub-sub-structure and a plurality of presentation element sub-sub-structures.

[emphasis added]

It is not clear what is being referred to in the last paragraph of page 7 of the office action. The Examiner states that he is referring to a claim 43, which is dependent on a claim 42 – but claim 43 is NOT dependent on claim 42. Does the Examiner mean claim 44, which is dependent on claim 43?

With respect to whichever claim, the Examiner cites column 8, line 27, that refers to hierarchical encapsulation. However, this statement alone fails to teach or suggest what precise data structures are used. The containers of Gudmondson are objects, not data structures. Objects contain data structures, but they also contain code. Encapsulating objects fails to teach or suggest what data structures are used.

Moreover, claim 44 recites that the sub-presentation data structure comprises the play-out

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specification sub-structure and the presentation element sub-structures. This could not be the same structure as shown in Gudmondson, because one object does not appear to include another there.

Thus the Examiner has failed to present a prima facie case of obviousness against claim 44.

Moorby/Gudmondson: claims 33, 41

These claims depend from 28 & 37 and recite:

the play-out specification includes a location specification specifying a location of the presentation element when presented and wherein the interface program segment provides a location frame of reference relative to which the location specification for the presentation element is specified.

This claim relates to particular structure & content of data in memory.

Like Moorby, Gudmondson is an authoring system. The Examiner has failed to indicate how the Gudmondson reference relates to how program presentation elements are stored for playout, unlike the present claims. The Examiner points to "containers", but these are merely used for composing a presentation. There is no teaching or suggestion that they are for storage or transmission of program content once the presentation is established.

The Examiner points to Fig. 16(c) as allegedly showing containers or data structures. This figure again shows a graphical user interface, just like the figures the Examiner pointed out in Moorby. This is not a data structure at all.

The Examiner points to column 8, lines 25-67. This is where Gudmondson summarizes C:\MY DOCUMENTS\ANNE\LEGAL PRACTICE\PHILIPS\PROSECUTION\N16695 - APPEAL BRIEF.DOC

the object-oriented programming scheme. Enclosed with a prior amendment is a definition of

object-oriented programming taken from the online Internet dictionary "FOLDOC." This

definition explains that objects are data structures encapsulated with routines. For instance, at

col. 8, line 43, objects receive messages. These objects are used for programming/authoring

content. But what are the details of the insides of these objects? The text pointed to by the

Examiner does not say. It only describes them in functional terms, without reference to actual

data structures.

Accordingly, the Examiner has not made a prima facie case against these claims.

Moorby: claim 38

Claim 38 recites:

The information carrier of Claim 37, wherein the play-out specification includes a

timing specification specifying timing behavior of the at least one presentation

element and wherein the interface of the sub-presentation provides a time

reference relative to which the timing specification for the at least one

presentation element is specified.

This claim relates to details of what is stored on an information carrier. Since the portions of

Moorby pointed to by the Examiner relate only to a graphical user interface, as far as Applicants

can tell, Moorby fails to teach or suggest these details of what is stored.

Moorby: claim 39 & 31

Claim 39 recites:

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The information carrier of Claim 38, wherein the timing specification specifies the

start of the at least one presentation element with respect to the time reference of

the sub-presentation.

This claim recites further details of what is stored on the information carrier. Again, the portions

of Moorby referenced by the Examiner, discuss only what appears on the screen, not what is

stored. Accordingly this claim even more clearly distinguishes patentably over the reference as

applied.

Claim 31 is similar to claim 39.

Moorby: claims 40 & 32

Claim 40 recites:

The information carrier of Claim 38, wherein the timing specification specifies the

duration of the at least one presentation element with respect to the time reference

of the sub-presentation.

This claim recites still further details of what is stored on the information carrier. Again, the

portions of Moorby referenced by the Examiner, discuss only what appears on the screen, not

what is stored. Accordingly this claim even more clearly distinguishes patentably over the

reference as applied.

Claim 32 is similar to claim 40.

Moorby: claim 42, 34

Claim 42 recites:

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The information carrier of Claim 37, wherein the interface of the sub-presentation provides a sub-presentation priority specifying a priority with respect to presenting the sub-presentation.

This claim recites that the <u>interface</u> provides a <u>priority</u> for a sub- presentation. It is unclear what the examiner thinks is relevant in Moorby to this recitation. However it appears, at the bottom of page 4 of the office action, that he may be pointing to figure 1 of Moorby. This figure shows only a timeline. It shows nothing about priority of sub- presentations. Accordingly, the Examiner has failed to make a *prima facie* case against this claim.

Claim 34 is similar.

Moorby: claim 29

This claim recites:

The presentation program portion of Claim 28, wherein the sub-presentation program segment comprises a sequence of presentation elements which are programmed to be presented one after the other.

The Examiner has not said where these limitations are to be found in the reference. The Examiner refers to figures 11 and 12 of Moorby which relate to graphical user interfaces, rather than what is stored in memory. Moreover, the user interfaces appear to show a program divided into sub-segments. Applicants are unable to find that segments are further divided into presentation elements when stored. Accordingly, Applicants submit that the Examiner has not made a *prima facie* case with respect to this claim.

Moorby: claim 30

This claim recites

The presentation program portion of Claim 28, wherein the sub-presentation program segment comprises a group of presentation elements which are programmed to be presented simultaneously with respect to each other.

Again the Examiner has failed to indicate where the limitations of this claim are allegedly to be found in the reference. He refers only generally to columns 11 and 12 of Moorby, not indicating which claim is being considered. In that section, Applicants find reference to various confusing terminology, e.g. "Activation Region", "call spots", "blocking", and so forth. The Examiner has not explained how these relate to the claim. Accordingly, Applicants submit that the rejection is insufficient.

IX. CONCLUSION

Applicant respectfully submits that he has answered each issue raised by the Examiner and that the application is accordingly in condition for allowance. Such allowance is therefore respectfully requested.

Respectfully submitted,

By C Consultation Anne E. Barschall

Reg. No. 31,089

(914) 332-1019

fax 914-332-7719

March 1, 2004

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X. APPENDIX

- 28. A presentation program portion stored on a computer readable medium, said presentation
- 2 program portion comprising:
- a sub-presentation program segment comprising:
- a presentation element with a play-out specification indicating how the
- 5 presentation element is to be played; and
- an interface program segment defining a reference timing for the play-out
- 5 specification, wherein the reference timing is defined independent of the presentation element.
- 29. The presentation program portion of Claim 28, wherein the sub-presentation program
- segment comprises a sequence of presentation elements which are programmed to be presented
- one after the other.
- 30. The presentation program portion of Claim 28, wherein the sub-presentation program
- segment comprises a group of presentation elements which are programmed to be presented
- 3 simultaneously with respect to each other.
- 31. The presentation program portion of Claim 28, wherein the reference timing specifies the
- start of the presentation element with respect to the sub-presentation program segment.
- 32. The presentation program portion of Claim 28, wherein the reference timing specifies the

- duration of the presentation element with respect to the sub-presentation program segment.
- 33. The presentation program portion of Claim 28, wherein the play-out specification includes a
- location specification specifying a location of the presentation element when presented and
- wherein the interface program segment provides a location frame of reference relative to which
- 4 the location specification for the presentation element is specified.
- 34. The presentation program portion of Claim 28, wherein the interface program segment
- 2 provides a sub-presentation priority specifying a priority with respect to presenting content
- 3 representative of the sub-presentation program segment.
- 35. A method for playing out a coded presentation on an electronic presentation device, the
- 2 method comprising the acts of:
- playing out at least one sub-presentation which comprises the acts of:
- determining a play-out specification for a presentation element based on a timing
- reference of the sub-presentation that is independent of the presentation element;
- 6 playing out the presentation element in accordance with the play-out specification.
- 36. An apparatus comprising a converter module for amending a coded presentation, the coded
- 2 presentation comprising:
- a sub-presentation program segment comprising:
- a presentation element with a play-out specification indicating how the

- 5 presentation element is to be played; and
- an interface program segment defining a reference timing for the play-out
- 5 specification, wherein the reference timing is defined independent of the presentation element,
- wherein the converter module is arranged to substitute the sub-presentation by a further sub-
- 9 presentation comprising a corresponding interface.
- An information carrier comprising a coded presentation, said coded presentation
- 2 comprising:
- a sub-presentation program segment comprising:
- at least one presentation element, having a corresponding play-out specification
- indicating how the at least one presentation element is to be played; and
- an interface program segment defining a reference timing for the play-out
- specifications, wherein the reference timing is defined independent of the at least one
- 8 presentation element.
- 1 38. The information carrier of Claim 37, wherein the play-out specification includes a timing
- 2 specification specifying timing behavior of the at least one presentation element and wherein the
- interface of the sub-presentation provides a time reference relative to which the timing
- 4 specification for the at least one presentation element is specified.
- 39. The information carrier of Claim 38, wherein the timing specification specifies the start
- of the at least one presentation element with respect to the time reference of the sub-presentation.

- 1 40. The information carrier of Claim 38, wherein the timing specification specifies the
- duration of the at least one presentation element with respect to the time reference of the sub-
- 3 presentation.
- 1 41. The information carrier of Claim 37, wherein the play-out specification includes a
- location specification specifying a location of the at least one presentation element when
- presented and wherein the interface of the sub-presentation provides a location frame of
- 4 reference relative to which the location specification for the at least one presentation element is
- 5 specified.
- 1 42. The information carrier of Claim 37, wherein the interface of the sub-presentation
- 2 provides a sub-presentation priority specifying a priority with respect to presenting the sub-
- 3 presentation.
- 43. A method for playing out a coded multi-media presentation on an electronic presentation
- device, the method comprising:
- accessing a medium, readable by the device and on which the coded multi-media
- 4 presentation is stored as a plurality of self-contained, sub-presentation data structures;
- selecting at least one sub-presentation data structure from the medium, which data
- structure comprises at least one play-out specification sub-structure and a plurality of

- presentation element sub-structures, referred to by the play-out specification substructure;
- retrieving at least one play-out specification portion from a first location in the data structure, which play-out specification portion specifies timing behavior of at least one respective presentation element within the data structure; and
- responsive to the play-out specification, retrieving the at least one respective presentation element from a second location in the data structure.
- 44. The method of claim 43, comprising accessing a self-contained, sub-sub-presentation data
- 2 structure from within the sub-presentation data structure, which sub-sub-presentation data
- structure comprises at least one play-out specification sub-sub-structure and a plurality of
- 4 presentation element sub-sub-structures.